

# **Kerala High Court**

**Prabhakara Panicker M.B, Aged 52 ...**

**VS**

**The State Of Kerala, Represented ...**

**on 1 July, 2010**

**IN THE HIGH COURT OF KERALA AT ERNAKULAM**

**Crl.MC.No. 4089 of 2008()**

**1. PRABHAKARA PANICKER M.B, AGED 52 SON**

**... Petitioner**

**2. P.J. JOSE, AGED 56,SON OF JOSEPH,**

**Vs**

**1. THE STATE OF KERALA, REPRESENTED BY**

**... Respondent**

**2. THE SUB INSPECTOR OF POLICE,**

**For Petitioner :SRI.SANJEEV BHASKAR**

**For Respondent :PUBLIC PROSECUTOR**

**The Hon'ble MR. Justice V.RAMKUMAR**

Dated :01/07/2010

**O R D E R**

CR

V. RAMKUMAR, J.

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Crl.M.C. No. 4089 of 2008

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Dated: 1st day of July, 2010

ORDER

In this petition filed under Sec. 482 Cr.P.C. the petitioners seek to quash Annexure - G F.I.R. and all subsequent proceedings including C.C. No. 244 of 2008 pending before the J.F.C.M. I, Vaikom.

THE PROSECUTION CASE

2. The case of the prosecution can be summarised as follows:-

A private cable operator by name "Karikode Cable Vision" had set up its installation at Kudavechoor without obtaining sanction from the Electrical Inspectorate of the K.S.E.B. which alone had the authority to permit the laying of cable lines through electric posts after considering the safety aspect behind the same. The said cable operator had given a cable connection to the de facto complainant M.A. Rajeev (3rd respondent herein). Due to the irresponsible and negligent manner in which the connection was given, the complainant's wife (Smitha) sustained an electric shock from the cable on 8-6-2005. Thereupon the complainant preferred applications under the Right to Information Act, 2005 ( "the RTI Act" for short) before accused Nos. 1 and 2 (Prabhakara Panicker, Executive Engineer, Electrical Division, K.S.E. Board, Vaikom and P.J. Jose, Assistant Executive Engineer, Electrical Sub Division, K.S.E. Board, Vaikom) to the effect that the aforementioned private cable operator was operating without taking adequate safety measures, that they were unauthorisedly tapping electricity from various points and that untoward occurrences were taking place. The complainant had given such complaints to the first accused on 15-3-2007 and 2-6-2007 and to the 2nd accused on 22-5-2007. In the reply given by A1 on 30-6-2007 it was falsely stated that there was no report of any accident in the area of operation of the aforesaid cable operator and that there were no security lapses on the part of the K.S.E. Board. Similarly, in the reply dated 20-9-2007 given by A2 it was falsely stated that it was after the officials concerned

satisfying about the safety regulations that connection was given to the cable operator. The 2nd accused refused to accompany the complainant who volunteered to show the illegal abstraction of electricity by the cable operator. The accused have thereby committed offences punishable under Sections 166 and 167 read with Sec. 34 I.P.C.

## THE COGNIZANCE

3. Annexure H private complaint filed by the 3rd respondent herein before the Magistrate was forwarded to the Vaikom Police Station under Sec. 156 (3) Cr.P.C. Annexure G is the F.I.R. and Annexure H is the final report. Subsequently, the J.F.C.M.I Vaikom took cognizance of the offences punishable under Sections 166 and 167 read with Sec. 34 I.P.C. and registered the case as C.C. No. 244 of 2008. Summons were issued to the accused. They entered appearance. It was thereafter that the accused filed the present CrI.M.C. for quashing the proceedings against them.

4. I heard the learned counsel appearing for the petitioners/accused and the learned counsel appearing for the Addl. 3rd respondent/complainant.

## ARGUMENT IN SUPPORT OF THE PROSECUTION

5. Adv. Sri. Roy Chacko, the learned counsel appearing for the Addl. 3rd respondent/complainant made the following submissions before me in support of the prosecution:- There was a statutory obligation on the accused to give true and correct information to Annexures D, E and F applications. In Annexure A reply given by A1 to Annexure D application and Annexure C reply given by A2 to Annexure F application, the real truth was suppressed and false replies were given. The accused have thereby committed the alleged offences. Going by the decision in [Achamma Chacko v. Government of Kerala](#) - 2007 (2) KLT SN 68 even if some of the offences in the F.I.R. cannot be made out, that is not sufficient to quash the F.I.R. The decisions in Swaran Singh and Another v. State - (2008) 8 SCC 435 and [State of Haryana v. Bhajan Lal](#) - 1992 Suppl. (1) SCC 335 have laid down the broad parameters regarding the principles governing the exercise of the power under Sec. 482 Cr.P.C. and courts are generally loathe to quash the First Information Report and subsequent proceedings. The bar of jurisdiction relied on by the petitioners as contained in Sec. 23 of the R.T.I Act cannot be applied to a criminal prosecution for offences punishable under the provisions of the Indian Penal Code. The words "other proceedings" occurring in Sec. 23 of the R.T.I. Act should be read as "ejusdem generis" to the preceding words "suit or application" in the light of the decisions in [Gurdit Singh and Others v. Munsha Singh](#) - (1977 ) 1 SCC 791 and Indian city

Properties Ltd. v. Municipal commissioner of Greater Bombay - (2005) 6 SCC 417. The petitioners, therefore, may have to face the trial and try to get an honourable acquittal in case the same is possible.

## JUDICIAL RATIOCINATION

6. I am afraid that I cannot agree with the above submissions made on behalf of the complainant. Admittedly the complainant's wife sustained the electric shock on 18-6-2005 and that too from the cable connection by the private cable operator by name Karikode Cable Vision. The complainant had also proceeded against the said cable operator before the Consumer Disputes Redressal Forum and had obtained compensation for the electric shock allegedly sustained by his wife. The subsequent attempt of the complainant is to make it appear that it was due to defective electric connection given by the K.S.E.B. to the above cable operator that his wife sustained the electric shock. It was to substantiate the said case that the 3rd respondent/complainant gave Annexures D, E and F applications in the year 2007, that is, nearly two years after the alleged occurrence.

7. The first petitioner who is the first accused took charge as Executive Engineer in the Electrical Division only on 4-4-2007 and the 2nd petitioner joined duty as Assistant Executive Engineer in the Electrical Sub Division on 21-7-2006. The 2nd petitioner subsequently retired from service as well. According to the petitioners, Annexures A to C replies were given to Annexures D to F applications on the basis of the records available in the respective offices of the K.S.E.B. The petitioners would have it that the de facto complainant was informed that the electric connection was given to the cable operator as per the Rules and Regulations and after taking sufficient safety measures, that no untoward incident due to the operation of the cable operator had been reported in that place and that after the complainant preferred the complaint he was assured that the K.S.E.B. will ensure that all precautions will be taken by the cable T.V. operator. It was dissatisfied with the above replies given by the petitioners that the de facto complainant (R3) instead of filing an appeal under Section 19 of the R.T.I. Act filed Annexure - H private complaint before the Magistrate and got the same forwarded to the police under Section 156 (3) Cr.P.C. The Police, after investigation concluded that the petitioner by giving untrue replies to the complainant, committed offences punishable under Sections 166 and 167 I.P.C. and accordingly charge sheeted the petitioners for the offences.

8. Sections 166 of I.P.C. reads as follows: &quot;166: Public servant disobeying law, with intent to cause injury to any person:- Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct

himself as such public servant, intending to cause, or knowing it to be likely that he will by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both". I will first consider the ingredients of Section 166 I.P.C. They are:-

i) The accused was a public servant at the relevant time ii) There was a direction of law as to how such public servant should conduct himself

iii) The accused had disobeyed such direction

iv) By such disobedience he had intended to cause or knew it to be likely to cause injury to any person. The fact that the petitioners/accused were public servants falling under Section 21 of the Indian Penal Code is not disputed. That legal position does not admit of any doubt. ([Vide Viswanathan Nair v. State of Kerala](#) - 1978 KLT 129). The case of the complainant is that in response to Annexures D to F applications the petitioners/accused gave incorrect replies. Except stating that the replies given were incorrect no attempt whatsoever has been made in the complaint to show as to how or in what respect the replies given were incorrect. There is no case that the accused had disobeyed the direction of law regarding their duties by refusing to furnish the information asked for. If in carrying out the direction of law the accused gave information which according to the complainant was untrue, that by itself cannot attract the offence punishable under Section 166 I.P.C. unless it is shown that the replies given by the accused were untrue. The basis for contending that the replies given by the accused were not true, has not been stated either in the private complaint or in the police report. Similarly, the last ingredient of the said Section that by such disobedience the accused had intended to cause or knew it to be likely to cause injury to the complainant is also absent. It has not been stated in Annexure H complaint as to in what way the complainant was precluded from prosecuting his remedies on account of the replies given by the petitioners/accused. While failure to give the information applied for or giving demonstrably false replies may amount to disobedience within the meaning of the Section, furnishing information which is not shown to be incorrect cannot be termed as disobedience of any direction of law.

9. The other offence with which the petitioners stand charge-sheeted is one punishable under Section 167 I.P.C. The said section reads as follows:-

167:- Public servant framing an incorrect document with intent to cause injury:- Whoever, being a public servant, and being as such public servant, charged with the preparation or translation of any document or electronic record, frames, prepares or translates that document or electronic record in a manner which he knows or

believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury to any person, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both”

The following are the ingredients which will have to be made out:-

- i) The accused at the relevant time was a public servant
- ii) The accused was entrusted with the duty of preparation of a document
- iii) The accused had framed, prepared or translated the document incorrectly; and
- iv) The accused did so with the intent or knowledge that it would cause or was likely to cause injury to any person. Here also, the private complaint and the police report are silent regarding the basis for the contention of the complainant that the replies given by the accused were false. Likewise, there is no allegation that the petitioners/accused gave the replies with the intent or knowledge that those replies would cause or were likely to cause injury to the complainant. As noted earlier, Annexure B is not the reply given by either of the petitioners. It is given by the Senior Superintendent attached to the office of the Electrical Section of the K.S.E. Board. But the complainant has not chosen to prosecute the Senior Superintendent who has given Annexure B reply to Annexure E application. It cannot even remotely be said that the petitioners who took charge in their respective offices nearly two years after the alleged mishap had given Annexure A and C replies with the intent or knowledge that their replies would cause or was likely to cause injury to the complainant or his wife. Thus, under no account could it be said that Sections 166 and 167 I.P.C. are attracted going by the statements in the charge-sheet or the averments in the private complaint.

10. Even if it were to be assumed that the allegations in the complaint or in the police report would prima facie make out offences punishable under Section 166 and 167 I.P.C. the prosecution has to surmount yet another obstacle, namely, the bar of proceedings under Sec. 23 of the R.T.I. Act. I now proceed to consider the question as to whether the sweep and amplitude of Section 23 of the R.T.I. Act are wide enough to bar a criminal prosecution .

11. Section 23 of the R.T. I Act reads as follows:- “Bar of jurisdiction of Courts:- No Court shall entertain any suit, application or other proceeding in respect of any order made under this Act and no such order shall be called in question otherwise than by way of an appeal under this Act”. The above Section has been very widely worded and does not appear to interdict proceedings before civil courts alone. The

bar against entertaining any suit, application or other proceeding in respect of any order made under the Act, places a total embargo on any juridical proceeding against any order made under the Act except by way of an appeal as provided under Sec. 19 of the Act. Going by the wide language in which the Section is couched, I am not inclined to accept the contention of the 3rd respondent that the words "other proceedings" have to be read as "ejusdem generis" so as to restrict the challenge only before a Civil Court. In the first place, the word "Court" occurring in the Section cannot be understood in a restricted sense so as to include only a civil Court. Secondly, the decisions relied on in this connection by the complainant were all rendered in respect different statutory provisions and under different contextual settings. Hence, they cannot be imported for the purpose of construing Sec. 23 of the R.T.I. Act.

12. It is true that the interdict against any proceeding before a Court is only in respect of any "order" made under the Act. But then, the question is whether a "reply" given by a public information officer in response to an application (request) could be treated as an "order". The expression "information" defined under Sec. 2 (f) of the Act reads as follows:-

"Information" means any material in any form, including records, documents, memos, e-mails, opinions, advices, press releases, circulars, orders, logbooks, contracts, reports, papers, samples, models, data material held in any electronic form and information relating to any private body which can be accessed by a public authority under any other law for the time being in force

Thus, the "information" furnished by a Public Information Officer in response to a "request" made to him under Section 7 of the Act can be treated as an "order". Sec. 19 of the Act providing for appeals uses the expressions "decision" and "order" as forming the subject matter of appeals. Hence, Annexures A to C replies can be treated as "orders".

13. By filing a complaint before the Criminal Court alleging the commission of offences punishable under Sections 166 and 167 I.P.C., the 3rd respondent was actually challenging Annexures A to C replies (orders) to the applications filed by him under the R.T.I. Act. Those replies (orders) are immune to challenge either before the Civil Court or before the Criminal Court except by way of an appeal under Sec. 19 of the R.T.I. Act. For that reason also, I am of the view that the prosecution of the petitioners for offences punishable under Sections 166 and 167 I.P.C. was misconceived. It will be an abuse of the process of the Court to allow the proceedings to be continued before the Court below. Accordingly, Annexure G FIR and Annexure H final report as also the proceedings initiated as C.C. No. 248 of

2006 before the J.F.C.M. Vaikom shall stand quashed. This M.C. is allowed as above. It is made clear that this order will not affect the rights, if any, of the 3rd respondent under Sec. 19 of the R.T.I. Act. Dated this the 1st day of July, 2010.

Sd/-V. RAMKUMAR, JUDGE.

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P.S. to Judge